

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION**

HILDA L. SOLIS, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

**ALLIANCE EXCAVATING, INC., JAMES
SOWERS, and the ALLIANCE EXCAVATING,
INC. 401(k) PROFIT SHARING PLAN & TRUST,**

Defendants.

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: Case No. 11-cv-349

: Hon. Edmund A. Sargus
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CONSENT ORDER AND JUDGMENT

Plaintiff Hilda L. Solis, Secretary of Labor, United States Department of Labor ("Plaintiff"), pursuant to the provisions of the Employee Retirement Income Security Act of 1974("ERISA"), as amended, 29 U.S.C. §1001, et seq., filed a complaint against Defendants Alliance Excavating, Inc. and James Sowers, alleging breaches of fiduciary responsibilities under ERISA §§404(a)(1)(A) and (B), 29 U.S.C. §§1104 (a)(1)(A) and (B), with respect to their administration of the Alliance Excavating, Inc. 401(k) Plan & Trust ("the Plan").

Defendants Alliance Excavating, Inc., James Sowers, and the Plan (collectively "the Defendants") have waived service of process of the complaint and hereby admit to the jurisdiction of this Court over them and the subject matter of this action.

The Plaintiff and the Defendants have agreed to resolve all matters in controversy in this action between them (except for the imposition by Plaintiff of any penalty

pursuant to ERISA §502(l), 29 U.S.C. §1132(l), and any proceedings related thereto), and said parties do now consent to entry of a Judgment and Order by this Court in accordance therewith.

The parties agree that, if the Secretary of Labor assesses a penalty pursuant to ERISA §502(l) in connection with the violations alleged in this matter, the “applicable recovery amount” shall include all amounts paid in accordance with this Consent Order and Judgment.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Order and Judgment.

IT IS THEREFORE ORDERED that:

1. Defendants Alliance Excavating, Inc. and James Sowers are hereby permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §1001 *et seq.*

2. Defendants Alliance Excavating, Inc. and James Sowers are permanently removed as fiduciaries of the Plan and enjoined from serving or acting as fiduciaries or service providers with respect to any ERISA-covered employee benefit plan.

3. Summit Benefit Solutions, Inc. ("Summit") is hereby appointed as the independent fiduciary for the Plan. The independent fiduciary shall have the following powers, duties and responsibilities:

- a. As the independent fiduciary, Summit will have authority to collect, liquidate, manage, and distribute assets of the Plan for the benefit of the eligible participants and beneficiaries of the Plan who are entitled to receive such assets and shall terminate the Plan and distribute the Plan's assets in accordance with the Plan's governing

documents, the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001, *et seq.*, the Internal Revenue Code and this Consent Order and Judgment;

b. The independent fiduciary shall exercise reasonable care and diligence to identify and locate each participant and beneficiary of the Plan who is eligible to receive any payment under the terms of the Plan's governing documents and to disburse to each such eligible participant or beneficiary the payment to which he or she is entitled;

c. The independent fiduciary shall have full access to all data, information and calculations in the Plan's possession or under its control, including that information contained in the records of the Plan's custodial trustees and other service providers, bearing on the distribution of participant account balances, recovery of any amounts owed to the Plan and termination of the Plan;

d. The independent fiduciary may retain such persons and firms including but not limited to accountants and attorneys, as may be reasonably required to perform his duties hereunder;

e. For the services performed under this Consent Order and Judgment, the Plan shall pay the independent fiduciary compensation not to exceed the amount of \$1000, including costs reasonably and necessarily incurred; however, if EBSA, in its sole discretion, authorizes funds to pay some of the fees and expenses, the money owed to the independent fiduciary will first be paid from the authorized funds and the remaining amount, if any, shall be paid by the Plan.

f. The independent fiduciary shall obtain bonding in an amount that meets the requirements of ERISA §412, 29 U.S.C. §1112. The costs incurred by the independent fiduciary in obtaining such bonding shall be paid by the Plan; and

g. Upon final termination of the Plan and distribution of the Plan's assets, the independent fiduciary shall provide proof of such termination and distribution of the Plan's assets to the Regional Director, Cincinnati Regional Office, Employee Benefits Security Administration, located in the Ft. Wright Executive Building 1, 1885 Dixie Highway, Fort Wright, Kentucky 41011.

4. Each party agrees to bear his, her or its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

5. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Order and Judgment.

6. Nothing in this Consent Order and Judgment is binding on any government agency other than the United States Department of Labor.

DATED: 8-29-2011, 2011




HON. EDMUND A. SARGUS
UNITED STATES DISTRICT JUDGE

The parties hereby agree to the entry of this Consent Order and Judgment:

FOR THE SECRETARY OF LABOR


M. PATRICIA SMITH
Solicitor of Labor

Regional Solicitor
JOAN E. GESTRIN


MARLA J. HALEY
Trial Attorney
P.O. ADDRESS:
Office of the Solicitor
U.S. Department of Labor
230 South Dearborn Street, 8TH Floor
Chicago, Illinois 60604
Tel. 312-353-4455
Fax 312-353-5698

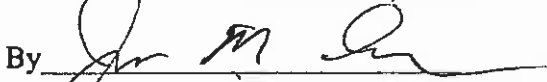
DATED: 8/22/11

FOR THE DEFENDANTS:


JAMES SOWERS

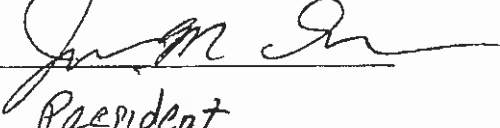
DATED: 8/17/11

ALLIANCE EXCAVATING, INC.

By 
Its President

DATED: 8/17/11

ALLIANCE EXCAVATING, INC. 401(k) PROFIT SHARING PLAN & TRUST

By 
Its President

DATED: 8/17/11